REMARKS

Claims 1, 3-9 and 11-13 are presented for prosecution in the present application. Claims 2, 10 and 14 have been canceled.

Claim Rejections - Prior Art

Independent Claim 1 and Dependent Claims 3-8

Independent claim 1 recites a child-resistant package that includes a container 24 having a finish 28 with an open mouth, at least one external thread 34 adjacent to the open mouth and at least one external radial projection 32 on a side of the thread spaced from the mouth. (Numerals are employed to facilitate reference to the application drawings and not by way of limitation to the claim recitations.) A closure 22 has a base wall 56, a skirt 60 with at least one internal thread 64 adjacent to the base wall for engagement with the external thread to thread the closure onto the container finish, at least one internal locking lug 76 spaced from the base wall, and an annular wall 58 extending from the base wall at a position spaced radially inwardly from the skirt for resilient internal engagement with the open mouth of the container. The internal locking lug on the closure skirt is engageable with the radial projection on the container finish when the closure is fully threaded onto the finish, and resiliency of the annular wall holds the at least one internal locking lug in engagement with the at least one external radial projection. The closure also includes at least one internal stop lug 78 on the skirt adjacent to but spaced from the internal locking lug 76 on the skirt for engagement with the external radial projection on the container finish to prevent over-tightening of the closure on the finish.

Amended claim 1, which is a combination of original claims 1 and 2, has been rejected over the three-referenced combination of Reiss 4,032,028, Landen 3,951,289 and Cooke 4,739,980. Reconsideration is respectfully requested.

Reiss discloses a thread-type child-resistant closure system that includes an external thread 30 on the container neck finish, a gap 48,50 (FIG. 4) in the external thread, and a lug or projection 34 spaced from the lower end of the thread. This projection or lug 34 forms a stop to prevent over-tightening of the closure onto the container neck finish (FIG. 4; column 2, lines 44-46). The internal thread on the closure skirt is a segmented thread 36,38,40 having a lug 42 that is receivable in the gap 48,50 to prevent unthreading of the closure from the container neck finish absent downward pressure against the spring force supplied by the resilient disc 52.

Landen is directed to a completely different type of child-resistant closure system, commonly referred to as a bayonet-type closure system. The closure system in Landen includes external projections 13 on the container neck finish and internal lugs or projections 15 on the closure skirt that are receivable in notches 21 on the undersides of the container neck finish projections. The spring force is supplied by an annular wall 20 on the closure that engages a frusto-conical internal surface 18 on the container neck finish.

Thus, the two primary references, Reiss and Landen, are directed to completely different and non-analogous types of child-resistant closure systems - i.e., a thread-type system in Reiss and a bayonet-type system in Landen. Neither reference teaches, suggests or provides incentive to modify the disclosures of the references in such a way as to meet the limitations of claim 1, which is necessary to support the rejection.

Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ 2d 1434 (Fed. Cir. 1988); *In re Geiger*, 815 F.2d 686 (Fed. Cir. 1987); *Ex parte Clapp*, 227 USPQ 972 (POBA 1985). This is particularly true, of course, where the elements of the reference would be required to coact with each other in a manner different from the way they coact in the reference disclosure, or where the key or distinguishing element of the appealed claims is completely lacking in the reference.

> [I]n order to meet the terms of the claims on appeal, the elements of the [prior art] device would have to be arranged in a manner different from that disclosed by [the art]. The elements of the reference would also be required to coact differently from the way they coact in the arrangement disclosed by the reference. The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide motivation or reason for the worker in the art, without the benefit if applicant's specification, to make the necessary changes in the reference device.

Ex parte Chicago Rawhide Mfg. Co, 223 USPQ 351, 353 (POBA 1984). See also *Fromsom v. Advanced Offset Plate, Inc.*, 755 F.2d 1549, 225 USPQ 26 (CAFC 1985); *In re Sernaker*, 702 F.2d 989, 217 USPQ 1 (CAFC 1983) and *Ex parte Stauber*, 208 USPQ 945, 946 (POBA 1980).

> Simply stated:
>
> It is wrong to use the [application] as a guide through the maze of prior art references, ... Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

Orthopaedic Equipment Co., Inc. v. U.S., 702 F.2d 1005, 217 U.S.P.Q. 193, 199 (Fed. Cir. 1983). See also *In re Fritch*, 972 F.2d 1260 23 U.S.P.Q.2d 1780 (Fed. Cir. 1942) ("It is

impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art." 23 U.S.P.Q.2d at 1784); *In re Pavlecka*, 138 U.S.P.Q. 152 (CCPA 1953); *Ex parte Garrett*, supra .

Cooke also discloses a bayonet-type child-resistant closure system. Cooke apparently is cited for alleged disclosure of an internal stop lug spaced from the internal locking lug on the closure skirt formerly recited in dependent claim 2 and now incorporated into claim 1. However, the "stop" element 64 in Cooke FIG. 8 (see column 6, lines 38-39) is on the container neck finish rather than the closure skirt, as is the stop lug 34 in Reiss and the stop surface 25 in Landen. In other words, the cited references uniformly teach that the stop element to prevent further application of the closure onto the container neck finish, whether a threaded-type system as disclosed in Reiss or a bayonet-type system as disclosed in Landen and Cooke, is provided on the container neck finish and not on the inside of the closure skirt. This recitation of former claim 2 now incorporated into amended claim 1 is completely new and non-obvious over the cited art.

Dependent claim 4 recites that the external radial projection on the container neck finish is located on a side of the external thread opposite from the open mouth. Dependent claim 3, amended to depend from claim 4, further recites that the external radial projection on the container neck finish has a tangential leg portion and an axial leg portion at a counterclockwise end of the tangential leg portion, with the tangential leg portion axially trapping the internal locking lug on the skirt against the spring force supplied by the annular wall. The disclosure of Reiss, the reference that discloses a thread-type child-resistant system, suggests no neck finish radial projection of this type. To the contrary, the stop lug 34 in Reiss has a block-like geometry and does not perform any

locking or trapping function. The external projections in Landen and Cooke have tangential and axial leg portions, but are disclosed in the environment of a bayonet-type child-resistant system which is not in any way analogous to a thread-type system of the type disclosed in Reiss.

Dependent claim 8, which has been amended to depend from claim 3, recites that the axial portion of the external projection on the container includes a cam surface, that the internal locking lug on the closure includes a cam surface, and that the cam surfaces cooperate initially to engage the external radial projection and the locking lug for securing the closure to the container neck finish in a child-resistant manner. In the bayonet-type systems disclosed in Landen and Cooke, the cam surfaces are on the tangentially extending portions of the external projections inasmuch as the axially extending portions of the external projections perform stop functions and not camming functions. This, of course, reflects the non-analogous nature of the bayonet-type systems disclosed in these references. The external stop projection 34 in Reiss has no cam surfaces or the like.

Dependent claims 4-7 are allowable for reasons previously discussed as well as the additional novel limitations set forth therein.

Independent Claim 9 and Dependent Claims 11-12

Independent claim 9 is directed to a child-resistant closure that includes a base wall 56, a skirt 60 with at least one internal thread 64 adjacent to the base wall for engagement with an external thread on a container finish to thread the closure onto the container finish. An annular wall 58 extends from the base wall at a position spaced radially inwardly from the skirt for resilient internal engagement with an open mouth of the

container finish. At least one internal locking lug 76 on the skirt is spaced from the base wall and is engageable with an external projection on the container finish when the closure is threaded onto the container finish and resiliency of the annular wall holds the locking lug in axial engagement with the external projection. At least one internal stop lug 78 on the skirt is adjacent to but spaced from the internal locking lug 76 to prevent over-tightening of the closure on the container neck finish.

Amended claim 9, which combines original claims 9 and 10, has been rejected over Reiss combined with Landen. However, as discussed in detail above with respect to amended claim 1, neither of these references even remotely discloses or suggests a closure having the combination of at least one internal thread, at least one internal locking lug and an internal stop lug. Nor does the Cooke reference disclose or suggest a closure having such a combination of recited elements.

Dependent claims 11-12 are allowable both by reason of dependency from claim 9 and because of the additional novel limitations set forth therein.

Independent Claim 13

Independent claim 13 recites a container 24 having a finish 28 with an open mouth defined at least in part by an internal tapered surface 40. At least one external thread 34 is adjacent to the open mouth, and at least one external radial projection 32 is on a side of the external thread spaced from the open mouth. The external radial projection has a cam surface 50 for interengagement with a cam surface on an internal lug of a closure, as shown in FIG. 6A.

Claim 13 has been rejected over the three-referenced combination of Reiss, Landen and Cooke. Reiss discloses a container having an open mouth, an external thread

and an external radial projection 34. However, the projection 34 is strictly a block-shaped stop projection (column 2, lines 44-46) and has no cam surface or the like. Landen and Cooke disclose bayonet-type child-resistant closure systems having external projections with cam surfaces, but no external threads or the like. Furthermore, the stop elements 25 in Landen and 64 in Cooke do not have cam surfaces or the like, so there would be no motivation to provide cam surfaces or the like on the stop lug 34 in Reiss even if Landen and Cooke were somehow combinable with Reiss.

Claim Rejections - Double Patenting

A Terminal Disclaimer accompanies this Amendment to obviate the double patenting rejection over application Serial No. 10/727,823.

It therefore is believed and respectfully submitted that all claims 1, 3-9 and 11-13 remaining in the application are allowable at this time, and favorable action is respectfully solicited.

Please charge any fees associated with this submission to Account No. 15-0875 (Owens-Illinois).

Respectfully submitted,

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